IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 313 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

SHRIKANT G TIWARI

Appearance:

1. Criminal Appeal No. 313 of 1993

MR BD DESAI Ld. APP for Petitioner No. 1

MR MA KHARADI for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 15/04/2002

ORAL JUDGEMENT

Heard Mr. BD Desai learned APP for petitioner-State.

The respondent-accused was charged for the offence punishable under sec. 21(1)(4)(c) of the

factories Act, 1948 read with section read with section 92 of the Factories Act. Three formal complaints were filed in the Court of Metropolitan Magistrate, (Court No. 4), Ahmedabad. In all the three cases, the accused appeared and pleaded guilty and has been convicted on pleading guilty of all the three cases, mentioned in three different complaints.

According to the prosecution, all the three criminal cases were filed on account of one accident occurred in the Factory managed by the respondent-accused. The present appeal is under sec. 377 of CrPC for enhancement of the sentence passed by the ld. Metropolitan Magistrate (Court No. 4) in Criminal Case No. 4370 of 1988. The grievance of the appellant-State of Gujarat is that though the statute provides for minimum punishment, the impugned order dated 22.12.1992 imposes fine of Rs. 1500/, in default, to under-go S/I for 30 days. It is contended by Mr Desai that though it was specifically averred in the complaint that as per Factories Act, 1948, the offence punishable under Chapter-IV, the accused be imposed penalty of minimum Rs. 5000/ fine even than ld. Metropolitan Magistrate has ignored this aspect.

Ld. Counsel appearing for respondent-acused Mr. Kharadi has fairly submitted that minimum punishment prescribed is fine of Rs. 5000/ Mr. Desai ld. APP submits that the appellant would be satisfied if the amount of fine is raised to Rs. 5000/ i.e. minimum prescribed under the Statute.

Accepting the substance and the settled legal proposition, the amount of fine is enhanced to Rs. 5000/, and in default, the respondent-acused shall have to under-go S/I for 30 days. No formal alteration in the period of sentence in default, is required to be made.

Mr. Kharadi has pointed out that the accused has paid up the fine of Rs. 1500/ immediately after the impugned order is passed by the Ld. Metropolitan Magistrate and the respondent should be granted reasonable time to pay up the remaining amount of fine i.e. Rs. 3500/. The respondent-accused is directed to pay up the amount of fine within 15 days from the date of receipt of the writ of this order by the court of Ld. Metropolitan Magistrate, Ahmedabad, failing which , the concerned Metropolitan Magistrate shall issue bailable warrant to secure the presence of the respondent-accused and commit him to the prison to under-go S/I imposed in default.

This appeal is allowed accordingly.

(C.K. BUCH, J.)

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